

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

WADE MCCLURE, 27927-180 )  
Petitioner, )  
vs. ) No. 3:08-CV-238-O  
LUBBOCK COUNTY DISTRICT ) ECF  
ATTORNEY, )  
Respondent. )

**FINDINGS, CONCLUSIONS AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE**

This cause of action was referred to the United States Magistrate Judge pursuant to the provisions of Title 28, United States Code, Section 636(b), as implemented by an order of the United States District Court for the Northern District of Texas. The Findings, Conclusions and Recommendation of the United States Magistrate Judge follow:

**FINDINGS AND CONCLUSIONS**

**I. FACTUAL BACKGROUND**

Petitioner filed this petition pursuant to 28 U.S.C. § 2241. On February 20, 2008, the Court sent Petitioner a notice of deficiency because Petitioner failed to file a proper request to proceed *in forma pauperis* or pay the filing fee. The Court informed Petitioner that failure to cure the deficiency within thirty days could result in a recommendation that this complaint be dismissed. More than thirty days have passed and Petitioner has failed to comply with the Court's order.

**II. DISCUSSION**

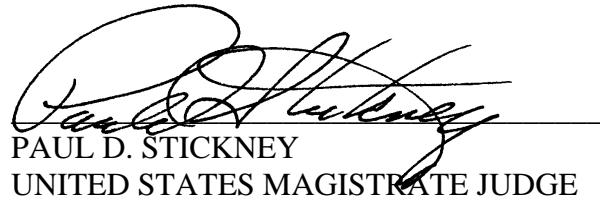
Rule 41(b) of the Federal Rules of Civil Procedure allows a court to dismiss an action *sua*

*sponte* for failure to prosecute or for failure to comply with the federal rules or any court order. *Larson v. Scott*, 157 F.3d 1030, 1031 (5<sup>th</sup> Cir. 1998). “This authority [under Rule 41(b)] flows from the court’s inherent power to control its docket and prevent undue delays in the disposition of pending cases.” *Boudwin v. Graystone Ins. Co., Ltd.*, 756 F.2d 399, 401 (5<sup>th</sup> Cir. 1985) (citing *Link v. Wabash, R.R. Co.*, 370 U.S. 626 (1962)). Plaintiff has failed to comply with the Court’s order. Accordingly, this petition should be dismissed for want of prosecution.

### **RECOMMENDATION**

For the foregoing reasons, the Court recommends that the District Court dismiss the petition without prejudice for want of prosecution pursuant to Fed. R. Civ. P. 41(b).

Signed this 23<sup>rd</sup> day of June, 2008.



PAUL D. STICKNEY  
UNITED STATES MAGISTRATE JUDGE

**INSTRUCTIONS FOR SERVICE AND  
NOTICE OF RIGHT TO APPEAL/OBJECT**

The United States District Clerk shall serve a true copy of these findings, conclusions and recommendation on Plaintiff. Pursuant to Title 28, United States Code, Section 636(b)(1), any party who desires to object to these findings, conclusions and recommendation must serve and file written objections within ten days after being served with a copy. A party filing objections must specifically identify those findings, conclusions or recommendation to which objections are being made. The District Court need not consider frivolous, conclusory or general objections. A party's failure to file such written objections to these proposed findings, conclusions and recommendation shall bar that party from a *de novo* determination by the District Court. *See Thomas v. Arn*, 474 U.S. 140, 150 (1985). Additionally, any failure to file written objections to the proposed findings, conclusions and recommendation within ten days after being served with a copy shall bar the aggrieved party from appealing the factual findings and legal conclusions of the Magistrate Judge that are accepted by the District Court, except upon grounds of plain error. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996) (en banc).